



**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Mauldin, Sidney Wayne

Application No.: 10/750,108

Group No.: 3672

Filed: 12/31/03

Examiner: Tsay, Frank

For: Minimal Resistance Scallop for a Well Perforating Device

**Mail Stop Petition**

**Commissioner for Patents**

**P.O. Box 1450**

**Alexandria, VA 22313-1450**

**STATEMENT OF UNINTENTIONAL DELAY**

TO THE ASSISTANT COMMISSIONER FOR PATENTS

SIR:

Applicant did not receive two separate mailings from the examiner. Personnel at the USPTO recommended filing a Petition to Withdraw the Holding of Abandonment but that petition was dismissed with a recommendation to file a petition to revive based on unintentional abandonment. The paper dismissing the earlier petition is attached. It also said that the \$400 paid along with the earlier petition was not required and could be applied towards this petition.

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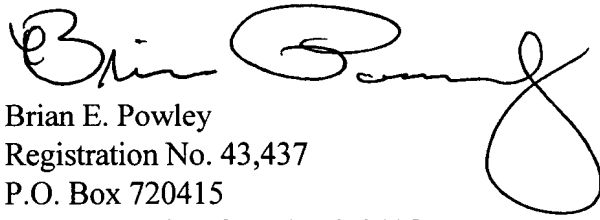
**CERTIFICATION UNDER 37 C.F.R. 1.10**

I hereby certify that this correspondence and the documents referred to as attached therein are being deposited with the United States Postal Service on this date April 6, 2007, in an envelope as "Express Mail Post Office to Addressee", mailing Label Number ER 539844752 US, addressed to the: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date: 4-6-07

Brian E. Powley

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian E. Powley". The signature is fluid and cursive, with a large loop at the end of the last name.

Brian E. Powley

Registration No. 43,437

P.O. Box 720415

Oklahoma City, OK 73172-0415

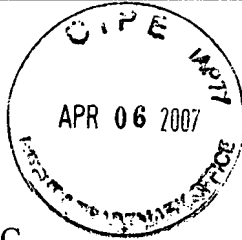
PH: 405-722-3663

Attorney for Applicant



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
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Oklahoma City OK 73172-0415

**COPY MAILED**

**NOV 30 2006**

**OFFICE OF PETITIONS**

In re Application of Mauldin	:	
Application No. 10/750,108	:	Decision on Petition
Filing Date: December 31, 2003	:	
For: Minimal Resistance Scallop for	:	
a Well Perforating Device	:	

This is a decision on the petition filed September 5, 2006, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed**.

A final Office action was mailed December 6, 2005.

A request for a one-month extension of time was filed March 6, 2006.

An amendment was filed April 6, 2006.

An advisory action was mailed May 4, 2006. A supplemental advisory action was mailed May 17, 2006. Petitioner received neither Office action.

A Notice of Abandonment was mailed July 19, 2006.

The instant petition contends the application is not abandoned.

The application is not abandoned if petitioner filed a timely and proper reply to the final Office action. The reply filed April 6, 2006, was timely. However, the reply was not a proper reply to the final Office action. Applicant was required to file one of three things with the office in order to avoid abandonment of the application:

- (1) an amendment which *prima facie* placed the case in condition for allowance,
- (2) a Notice of Appeal and the required fee, or
- (3) a RCE.

Although petitioner filed an amendment on April 6, 2006, the examiner determined the amendment failed to place the application in conditional for allowance. Therefore, the application is abandoned.

Although the non-receipt of the advisory actions is regrettable, the non-receipt does not change the fact a proper reply was not filed in response to the final Office action within the time period set forth in the final Office action. The Office is under no obligation to advise an applicant of any deficiency in sufficient time to permit the applicant to take corrective action.<sup>1</sup> Proof of failure to receive notice of a deficiency in an amendment is not sufficient to prove an application is not abandoned.

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply (already submitted), the required petition fee (\$750 for a small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. A copy of a blank petition form is enclosed for petitioner's convenience.

A fee is not required for a petition to withdraw the holding of abandonment. Petitioner may request the fee be applied towards any fee required for a petition under 37 CFR 1.137(b) in the future. In the alternative, if petitioner does not wish to continue to seek revival of the application, petitioner may request a refund of the \$400. A request for a refund may be sent to: Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany any request for refund.


Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are NOT permitted.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Mail Stop Petition  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria, VA 22313-1450

By facsimile: (571) 273-8300  
                  Attn: Office of Petitions

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley  
Senior Petitions Attorney  
Office of Petitions

Attached: Form PTO/SB/64

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<sup>1</sup> See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985); see also In re Colombo, Inc., 33 USPQ2d 1530, 1532 (Comm'r Pat. 1994) (while the Office attempts to notify applicants of deficiencies in their responses in a manner permitting a timely correction, the Office has no obligation to notify parties of deficiencies in their responses in a manner permitting a timely correction).



**Brian E. Powley, P.L.L.C.**

Attorney and Counselor at Law

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April 6, 2007

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

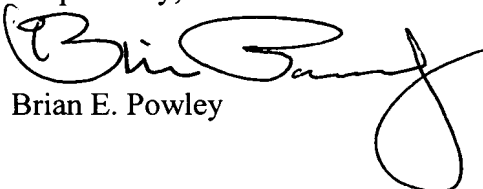
Dear Sir:

Enclosed for your review are the following:

1. Petition for Revival of an Application for Patent Abandoned Unintentionally;
2. Statement of Unintentional Delay;
3. Petition fee of \$750.00;
4. Notice of Appeal from the primary examiner to the Board of Patent Appeals;
5. Notice of Appeal fee of \$250.00; and
6. Confirmation of Receipt Postcard.

Please return previously paid fees of \$400 for Petition to Withdraw the Holding of Abandonment along with the \$250 previously filed Notice of Appeal. Thank you for your assistance. Please call with any questions.

Respectfully,

  
Brian E. Powley